

FILED
KENDALL J. MURPHY
CLERK

2003 OCT 29 PM 4: 25

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

JOSEPH SMITH

:

Case No. 03:03-368

Plaintiff

:

Judge ROSE

vs.

:

NOTICE OF REMOVAL

DAIMLERCHRYSLER CORPORATION, :
et al.

:

Defendants

:

Defendants DaimlerChrysler Corporation, Freightliner LLC, and Freightliner Specialty Vehicles, Inc. hereby give notice of removal of this action from the Court of Common Pleas, Montgomery, County, Ohio, pursuant to 28 U.S.C. §§ 1441 and 1446.

1. DaimlerChrysler Corporation, Freightliner LLC, and Freightliner Specialty Vehicles, Inc. are named defendants in a civil action filed in and presently pending before the Court of Common Pleas of Montgomery County, Ohio, styled *Smith v. DaimlerChrysler Corporation, et al.*, Case No. 2003 CV 05336 ("state court action"). A true and accurate copy of the Complaint is attached as Exhibit "A."

REMOVAL IS TIMELY

2. All of the defendants were served with a copy of plaintiff's Complaint in the state court action on October 2, 2003. True and accurate copies of each defendant's Proof of Receipt of Summons are attached collectively as Exhibit "B."

3. This Notice of Removal has been filed with this Court within thirty (30) days of receipt of the Complaint by defendants, as required by 28 U.S.C. § 1446(b). This Notice is therefore timely filed.

DIVERSITY BETWEEN PARTIES

4. Plaintiff Joseph Smith is, and was at the time this action was commenced, a resident of the State of Florida, residing at 5520 South Pinetree Point, Lecanto, Florida 34461.

5. Defendant DaimlerChrysler Corporation is, and was at the time this action was commenced, a Delaware corporation, with its principal place of business in Michigan.

6. Defendant Freightliner LLC is, and was at the time this action was commenced, a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Oregon.

7. Defendant Freightliner Specialty Vehicles, Inc. is, and was at the time this action was commenced, an Oklahoma corporation, with its principal place of business in Oklahoma.

AMOUNT IN CONTROVERSY EXCEEDS JURISDICTIONAL MINIMUM

8. Plaintiff alleges that the purchase price of the vehicle was \$79,836.00. (Complaint, ¶ 7). In the "wherefore" section appearing at the conclusion of each count of the Complaint, plaintiff indicates he is seeking a buy-back for the full purchase price of the vehicle, including collateral charges, finance charges, incidental and consequential damages. (See, e.g., Complaint, Counts I through IV.

9. If all of the defendants' defenses fail, and if plaintiffs prove all of their damages, the damages will exceed \$75,000.00, exclusive of interests and costs. Therefore, the amount in controversy in the state court action, exclusive of interest and costs, exceeds \$75,000.00.

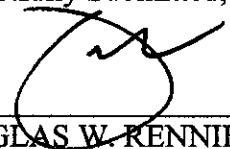
DIVERSITY JURISDICTION MET

10. This Court therefore has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that the Complaint presents a case where the amount in controversy exceeds the sum of \$75,000.00 and is between citizens of different states. 28 U.S.C. § 1441(a). This Court may exercise supplemental jurisdiction over any remaining claims pursuant to 28 U.S.C. § 1367.

11. Defendants will promptly file a copy of this Notice with the Clerk of the Common Pleas Court of Montgomery County, Ohio, as required by 28 U.S.C. § 1446(d).

12. A copy of all process and pleadings received to date in the state court action are attached hereto as Exhibit "C."

Respectfully Submitted,



DOUGLAS W. RENNIE (0001148)
G. TODD HOFFPAUIR (0064449)
MONTGOMERY, RENNIE & JONSON
Attorneys for Defendants
36 East Seventh Street, Suite 2100
Cincinnati, Ohio 45202-4413
Tel: (513) 241-4722
Fax: (513) 241-8775
drennie@mrj.cc
thoffpauir@mrj.cc

CERTIFICATE OF SERVICE

I served a copy of the foregoing by First-Class U.S. Mail, postage prepaid, upon J. Daniel Scharville and Margaret E. Cooper, Kahn & Associates, L.L.C., 55 Public Square, Suite 650, Cleveland, Ohio 44113; on this 28th day of October, 2003.



G. TODD HOFFPAUIR

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